

Supreme Court, U.S.
FILED

NOV 23 1979

MICHAEL RODAK, JR., CLERK

APPENDIX

1978 TERM

No. 78-1933

STEVEN H. MONTGOMERY, Individually, and d/b/a
LAMINATING COMPANY OF COLORADO, and d/b/a
AMERICAN LAMINATING COMPANY,
Petitioner,

v.

CENTURY LAMINATING, LTD.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 28, 1979
CERTIORARI GRANTED OCTOBER 9, 1979

INDEX

INTRODUCTORY NOTE	i
UNITED STATES DISTRICT COURT DOCKET	1
MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT	9
MOTION FOR INJUNCTION	12
NOTICE OF APPEAL	14
ORDER	15
INJUNCTION	16
COURT OF APPEALS DOCKET	18
MOTION TO DISMISS APPEAL	23

INTRODUCTORY NOTE

The Judgment of the United States District Court for the District of New Mexico in Action No. 76-197-P is printed in the Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit at page B-1.

The opinion of the United States Court of Appeals for the Tenth Circuit in Action No. 77-1541 is printed in the Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit at page A-1.

The Petitioner and the Respondent have stipulated that the United States District Court Docket should be printed in abbreviated form reflecting docket entries dating from the first day of jury trial in Action No. 76-197-P.

UNITED STATES DISTRICT COURT DOCKET

CENTURY LAMINATING, LTD.,
Plaintiffs,

v.

STEVEN H. MONTGOMERY, and d/b/a
LAMINATING COMPANY OF COLORADO, and d/b/a
AMERICAN LAMINATING COMPANY,
Defendants.

REMOVAL from District Court of Bernalillo County.

Breach of Contract — Title 28 U.S.C. 1332 and 1441 — Breach
of Contract in manufacture and distribution of specialty lami-
nated products.

WILLIAM J. LOCK	HAROLD D. STRATTON, JR.
ROBINSON, STEVENS &	ROBERT N. SINGER
WAINWRIGHT	COORS, SINGER & BROUILLIRE
904 Sandia Savings Bldg.	200 Lomas N.W., Suite 1100
Albuquerque, NM 87102	American Bank of Commerce Bldg.
243-6777	Albuquerque, NM 87125
	243-3547 (P.O. Box 25684)

Court Reporter: Howard Henry, CA#77-1541

5- 2-77	JURY TRIAL: For Plaintiff: W. Lock and D. Lee. For Defendants: R. Singer and H. Stratton. Jury selected and sworn. Opening Statements. Evidence presented. PAYNE, Judge. (Bean) HENRY, Repr.
5- 3-77	SECOND DAY OF TRIAL: Same counsel. Evidence presented. PAYNE, Judge. (Malone) HENRY, Repr.
5- 4-77	THIRD DAY OF TRIAL: Same counsel. Evi- dence presented. PAYNE, Judge. (Malone) HENRY, Repr.

5- 5-77	FOURTH DAY OF TRIAL: Same counsel. Evidence presented. PAYNE, Judge. (Malone) HENRY, Repr.		
5- 6-77	FIFTH DAY OF TRIAL: Same counsel. Evidence presented. Final Arguments. Instructions. Jury begin deliberation. Jury excused until Monday, May 9, 1977. PAYNE, Judge. (Malone) HENRY, Repr.		
5- 9-77	SIXTH DAY OF TRIAL: Jury continues deliberation and brings in Verdict in favor of Plaintiff. Court orders Verdict filed and Judgment to be presented to court by Plaintiff counsel within five days. PAYNE, Judge. HENRY, Repr.		
	VERDICT in favor of Plaintiff: \$14,000.00 actual damages; \$14,000.00 punitive damages.		
	EXHIBITS as per lists lodged in brown folder.		
5- 9-77	DEPOSITION of John Richard Lewinger. DEPOSITION of Victor Brown.		
5-11-77	123	ORDER that defendants' counterclaim and each of three causes of action contained therein are dismissed with prejudice. (PAYNE). Copies to counsel	
	124	JUDGMENT that Plaintiff, Century Laminating, Ltd., recover from Defendants, Steven H. Montgomery and American Laminating Co., the sum of \$14,000.00 in compensatory damages and the sum of \$14,000.00 in punitive damages, with interest and costs and let execution issue therefor. (PAYNE). Copies to counsel	
		FINAL ENTRY	

5-16-77 125 RETURN of service by U.S. Marshal on Victor Brown returned unexecuted on 5-2-77, at request of attorney.

126 RETURN of service by U.S. Marshal on Steven H. Montgomery unexecuted on 4-25-77.

5-17-77 127 BILL OF COSTS by Plaintiff, in the amount of \$1,761.09.

5-19-77 128 MOTION for judgment notwithstanding the verdict by Defendants.

129 MOTION for injunction by Plaintiff.

130 MEMORANDUM Brief in support of motion for injunction by Plaintiff.

5-19-77 131 MOTION to enjoin Defendants by Plaintiff, with attachments.

132 MEMORANDUM Brief in support of motion to enjoin Defendants.

133 AFFIDAVIT of Ronald E. Smith.

134 AFFIDAVIT of William J. Lock.

135 AFFIDAVIT of Ronald E. Smith.

136 AFFIDAVIT of William J. Lock.

5-23-77 137 OBJECTIONS to Plaintiff's Bill of Costs.

6- 7-77 138 ORDER SETTLING COSTS. (CLERK—JC)
Copies to counsel.

6-10-77 139 NOTICE OF APPEAL by Defendant of Order dismissing entered on 5-11-77. \$5.00 FF pd. \$250.00 will be paid in one week.
Copies to counsel of Notice of Appeal. Copy of Notice of Appeal and complete docket entries mailed to Court of Appeals, Denver. Copy of complete docket entries, form letter no. 2, and designation form letter mailed to counsel for Defendant. Copy of Notice and complete docket entries delivered to Court Reporter. Copy of Notice of Appeal delivered to Judge Payne.

6-14-77 140 ORDER that Defendants' motion for judgment notwithstanding verdict is denied, each party respective costs in connection with motion.
(PAYNE). Copies to counsel.

141 ORDER that Plaintiff's motion to enjoin corporate Defendant, American Laminating Co., a Colorado Corp., is denied, each party to bear their costs in connection with motion.
(PAYNE). Copies to counsel.

6-17-77 142 COST BOND of \$250 by Defendant.

6-20-77 LETTER from Mr. Harold D. Stratton, Jr., to Jesse Casaus, Clerk re: confirming arrangements with court reporter for transcript of record, with copy of letter addressed to Howard Henry.

6-23-77 143 DESIGNATION of record by Defendant counsel.

7-8-77 144 MOTION by Defendants for Order of the Court setting trial on merits of Plaintiff's request for injunctive relief.

7-18-77 145 ORDER extending time until August 9, 1977 for filing and docketing appeal (additional time required by Reporter to prepare transcript of appeal).
(PAYNE). Copies to counsel.

7-18-77 LETTER from Court of Appeals assigning number 77-1541.

7-20-77 146 DESIGNATION of record by Plaintiff.

8-5-77 147 ORDER extending time until August 29, 1977, for filing and docketing appeal. (PAYNE). Copies to counsel and U.S. Court of Appeals.

8-8-77 148 ORDER that Defendants' motion for order of Court to set trial on merits is denied (PAYNE). Copies to counsel.

8-9-77 149 INJUNCTION that Defendants, Steven H. Montgomery, American Laminating Co., and all persons in active participation with Defendants are restrained from violating terms of agreement dated 5-21-71, and enjoined until further order of this Court from:
1) distributing products outside Denver, Colorado area.
2) divulging to another the process owned and used by Century Laminating, Ltd.
3) selling franchises or granting licenses to other persons, firms, etc.
4) using name of American Laminating Co., or similarity.
(PAYNE). Copies to counsel.

8-29-77 TRANSCRIPT of proceedings in five volumes (original and one) received from Court Reporter.
Record on Appeal in IX volumes mailed to the Court of Appeals by certified mail.

8-31-77 RECEIPT acknowledge of record on appeal by Court of Appeals in nine volumes.

9-7-77 150 STAY of injunction pending appeal by Defendants.

9-19-77 151 MEMORANDUM by Defendants in support of Defendants' motion for stay of injunction pending appeal.

9-21-77 152 RETURN of service by U.S. Marshal on Steven H. Montgomery, unexecuted on 8-18-77.

153 ORDER that record on appeal is enlarged to include the following motions, pleadings and orders filed in cause subsequent to May 19, 1977; (1) order of Court of 6-14-77 denying Defendants' motion for judgment notwithstanding the Verdict; (2) Injunction of Court filed 8-9-77. (3) Order of the Court extending time for filing docketing appeal 7-18-77; (4) Order of Court extending time for filing and docketing appeal entered 8-5-77; (5) motion of Defendants for Stay of Injunction pending Appeal filed on 9-7-77; (6) any unfiled response of Plaintiff to motion of Defendants for stay of Injunction pending appeal; (7) any order of Court entered regarding motion of Defendants for stay of injunction pending appeal; that Clerk of District Court shall accumulate additional pleadings and transmit them for inclusion in record on appeal to U.S. Court of Appeal; this Order shall also be included in record on appeal to Tenth Circuit.
(PAYNE). Copies to counsel.

9.28-77 SUPPLEMENTAL Record on Appeal Volume II mailed to Court of Appeals.
RECEIPT acknowledged from Court of Appeals of supplemental record on appeal in one volume.

9.30-77 RECEIPT acknowledged from Court of Appeals of supplemental record on appeal in one volume.

10- 5-77 RECEIPT acknowledged from Court of Appeals of supplemental record on appeal III in one volume.

10-19-77 SUPPLEMENTAL Record on Appeal Volume IV mailed to the Court of Appeals.

10-22-77 RECEIPT acknowledged from Court of Appeals of Supplemental Record IV.

10-31-77 RECEIPT acknowledged from Court of Appeals of Supplemental V Record from Court of Appeals.

11- 9-77 154 OBJECTION by Plaintiff to Defendants' statement supplementing record.

155 STATEMENT by Defendants, Appellants, supplementing the record.

156 AFFIDAVIT of Robert N. Singer with attachments.

157 ORDER regarding motion of Defendants-Appellants to supplement the record on appeal.

158 ORDER that motion of Defendant for stay of injunction pending appeal is denied; that should Defendant post supersedas bond in amount of \$15,400.00 (being actual damages recovered by Plaintiff, plus 10%) injunction shall be stayed pending appeal.
(PAYNE). Copies to counsel.

11-11-77 RECORD on appeal supplemental Volume VI mailed to Court of Appeals.

12-20-77 159 RETURN OF SERVICE of Injunction by Marshal on Steven H. Montgomery returned unexecuted.

4-26-79 160 CERTIFIED COPY of Judgment and Opinion (Mandate) from U.S.C.A., dismissing appeal for want of jurisdiction. (PHILLIPS).
5-23-79 Volumes I through IX, Supplemental Volumes I through VI, etc. received from U.S.C.A.

6- 2-79 Contacted both Parties and William J. Lock recovered his exhibits, also Mr. Singer was notified but advised that William Graneley was counsel to the Defendant exhibits. Mr. Graneley left no forwarding address in Denver, CO. Exhibits will be destroyed by the Court on 6-26-79.

7-25-79 Letter from U.S.C.A. stating that a Petition for Writ of Certiorari was filed on June 28, 1979, and assigned Supreme Court No. 78-1933.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CENTURY LAMINATING, LTD.,
Plaintiff,
v.

STEVEN H. MONTGOMERY, individually
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY and AMERICAN
LAMINATING COMPANY, a Colorado
corporation,

Defendants.

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
MAY 19, 1977

No. CIV-76-197 P

**MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT**

Defendants, Steven H. Montgomery, Laminating Company of Colorado, American Laminating Company and American Laminating Company, a Colorado corporation, having at the close of all the evidence, moved the Court to direct a verdict in their favor which motion was denied and thereafter a verdict having been returned by the jury in favor of the Plaintiff, Century Laminating, Ltd., Defendants now move the Court to have the verdict and the judgment entered thereon set aside and to have judgment entered in accordance with their motion for a directed verdict. This motion is made on each and all of the grounds asserted in support of the Defendants motion for directed verdict and the following:

I

No evidence whatever was introduced at trial supporting the jury's verdict for punitive damages. Moreover, as a general rule, damages for breach of contract are limited to pecuniary loss sustained. Exemplary or punitive damages are not, ordinarily, or as a rule, recoverable in actions for breach of contract.

St. Paul at Chase Corp. v. Manufacturers Life Ins. Co., 262 Md. 192, 278 A.2d, cert. den., 404 U.S. 857, 30 L.Ed.2d 98, 92 S.Ct. 104. This rule applies, without exception, even if the breach is willful. *White v. Benkowski*, 37 Wis.2d 285, 155 N.W.2d 74.

The general rule in New Mexico is that punitive damages may not be awarded in a breach of contract action unless there is a showing of malice or of reckless or wanton disregard of the Plaintiffs' rights. *State Farm General Ins. Co. v. Clifton*, 86 N.M. 757, 527 P.2d 798 (1974). A more recent New Mexico case holds that punitive damages may not be awarded in a contract action unless the Defendants' conduct is maliciously intentional, fraudulent, oppressive or committed recklessly or with wanton disregard of the wronged party's rights. *Sierra Blanca Sales Co., Inc. v. Newco Industries, Inc.*, 88 N.M. 472, 542 P.2d 52 (1975).

There was no showing in this case that the Defendants' actions were either malicious, fraudulent, oppressive or committed recklessly or with wanton disregard of the Plaintiff's, Century Laminating, Ltd., rights. Therefore, punitive damages against the Defendants is wholly inappropriate.

Additionally, there is separate authority with relation to covenants not to compete, indicating that punitive damages are not recoverable in an action for breach thereof. 54 Am.Jur.2d, *Monopolies*, §579; *Howard v. Taylor*, 90 Ala. 241, 8 So. 36. The Plaintiff in this case was merely an assignee of the contract alleged to have been breached. Punitive damages for breach of a contract are not properly recoverable by an assignee. This is particularly true where, as here, no bad faith on the part of the Defendants has been shown beyond a mere breach of the agreement, where no notification of the assignment was given to the Defendants, and where the Plaintiff made no demand upon the Defendant to cease or cure the breach prior to the filing of this litigation. It would follow since punitive damages are not allow-

able in a breach of contract action, that the assignee of such a contract would not be entitled to recover punitive damages on an action thereon.

There being no evidence supporting punitive damages under any legal theory, the Defendants would respectfully move the Court to set aside that portion of the verdict awarding the Plaintiff punitive damages.

II

The evidence adduced at trial was wholly speculative, and in any event unrelated to the amount of compensatory damages awarded by the jury. No testimony or evidence was presented at trial to indicate that the Plaintiff had been damaged in any amount and certainly not in the amount of \$14,000. The Defendants therefore, move the Court to set aside the portion of the verdict awarding compensatory damages as being against the clear weight of the evidence.

III

The Defendants would further resubmit all previous legal points raised before this Court presented in this case and in conjunction with their motion for directed verdict and incorporate them herein by reference. There being no evidence to support the jury's verdict, the Defendants would respectfully move the Court pursuant to Rule 50 of the Federal Rules of Civil Procedure for a Judgment Notwithstanding the Verdict, in favor of the Defendants, dismissing all claims of the Plaintiff herein.

COORS, SINGER & BROULLIRE
BY: _____

HAROLD D. STRATTON, JR.
Attorney for Defendants
200 Lomas, NW — Suite 1100
P.O. Box 25684
Albuquerque, NM 87125
Telephone: 243-3547

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CENTURY LAMINATING, LTD.,
Plaintiff,
v.

STEVEN H. MONTGOMERY, individually
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY and AMERICAN
LAMINATING COMPANY, a Colorado
corporation,
Defendants.

MOTION FOR INJUNCTION

COMES NOW the Plaintiff, Century Laminating, Ltd., a New Mexico corporation, by its attorneys, Robinson, Stevens & Wainwright, and respectfully moves the Court for a permanent injunction enjoining the Defendants from:

1. Distributing custom or specialty laminated products outside of the metropolitan area of Denver, Colorado, or contracting with others to distribute the same outside of that area.
2. From divulging to another the process owned and used by Century Laminating, Ltd., for the manufacture of custom or specialty laminated products.
3. From selling franchises or granting licenses to other persons, firms or organizations for the purpose of manufacturing or distributing such custom or specialty laminated products.
4. From using the name, American Laminating Company, or any other name similar thereto.

In support thereof, Plaintiff respectfully states that the above referred to four elements of a contract dated May 21, 1971 were considered in a jury trial commencing May 2, 1977, in

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
MAY 19, 1977

No. 76-197-P Civil

which a verdict was rendered for damages in favor of the Plaintiff and against the Defendants, and the jury having found that the contract was valid and reasonable and should be enforced.

WHEREFORE, Plaintiff prays that the Court enter a permanent injunction enjoining the Defendants, their employees, servants, and agents from further violations of the terms of the agreement of May 21, 1971, which was attached as Exhibit "1" to the Plaintiff's Second Amended Complaint.

ROBINSON, STEVENS & WAINWRIGHT

By _____
WILLIAM J. LOCK
Attorneys for Plaintiff
P.O. Box 787
Albuquerque, New Mexico 87103
243-6777

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CENTURY LAMINATING, LTD.,
Plaintiff,

v.

STEVEN H. MONTGOMERY, individually
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY and AMERICAN
LAMINATING COMPANY, a Colorado
corporation,
Defendants.

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 10, 1977

No. 76-197-P Civil

NOTICE OF APPEAL

NOTICE is hereby given that Steven H. Montgomery, Defendant above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered on the 11th day of May, 1977.

COORS, SINGER & BROULLIRE

By: _____

ROBERT N. SINGER
Attorney for Defendant
200 Lomas, NW — Suite 1100
P.O. Box 25684
Albuquerque, NM 87125
Telephone: 243-3547

(Certificate of service omitted in printing)

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CENTURY LAMINATING, LTD.,
Plaintiff,

v.

STEVEN H. MONTGOMERY, individually
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY and AMERICAN
LAMINATING COMPANY, INC.
Defendants.

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 14, 1977

No. 76-197 Civil

ORDER

THIS MATTER comes on for consideration upon the motion of the Defendants, Steven H. Montgomery, Laminating Company of Colorado, American Laminating Company and American Laminating Company, a Colorado corporation, for judgment notwithstanding the verdict, filed May 19, 1977, and the Court having reviewed the file, exhibits and memorandum therein and being fully advised in the premises concludes that the motion is not well taken and should not be granted.

NOW, THEREFORE,

IT IS BY THE COURT ORDERED that the Defendants' motion for judgment notwithstanding the verdict be, and it is hereby denied, each party to bear their respective costs in connection with this motion.

/s/ H. Vearle Payne

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CENTURY LAMINATING, LTD.,
Plaintiff,
v.

STEVEN H. MONTGOMERY, individually
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY and AMERICAN
LAMINATING COMPANY, a Colorado
corporation,
Defendants.

INJUNCTION

THIS CAUSE coming on before the Court on the Motion of the Plaintiff, Century Laminating, Ltd., filed May 19, 1977, for a permanent injunction against the Defendants, and the Court having examined the Affidavits and Memorandum Brief filed in support of said Motion, and the Court having reviewed the jury verdict and Judgment entered following the trial hereof and the Court being fully advised and informed in the premises,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECreed that the Defendants, Steven H. Montgomery, American Laminating Company, a Colorado corporation, and any and all officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with the said Defendants, be and they hereby are perpetually enjoined and restrained from violating the terms of the agreement dated May 21, 1971, and specifically they are enjoined until further Order of this Court from the following acts:

1. Distributing custom or specialty laminated products outside of the metropolitan area of Denver, Colorado, or contracting with others to distribute the same outside of that area.

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
AUG 9, 1977

No. 76-197-P Civil

2. From divulging to another the process owned and used by Century Laminating, Ltd., for the manufacture of custom or specialty laminated products.

3. From selling franchises or granting licenses to other persons, firms or organizations for the purpose of manufacturing or distributing such customs or specialty laminated products.

4. From using the name, American Laminating Company, or any other name similar thereto.

/s/ H. Vearle Payne

UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ William J. Lock

Attorney for Plaintiff

Attorney for Defendants

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CENTURY LAMINATING, LTD.,
Plaintiff-Appellee,

v.

STEVEN H. MONTGOMERY, individually,
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY, a Colorado
corporation,
Defendants-Appellants.

JOHN R. FRYE, JR.
FRYE AND SAWAYA
50 South Steele Street
Suite 360
Denver, Colorado 80209
(303) 388-0904
Attorneys for Appellant

WILLIAM J. LOCK
Albuquerque, New Mexico 87102
507 Roma, N.W.
(505) 843-6031
Attorney for Appellee

No. 76-197-P

PAYNE, Judge.
HENRY, Court Reporter.

Notice of appeal filed: June 10, 1977
Action commenced: March 30, 1976

No. 77-1541

7-14-77 Cause docketed; docketing statement, orig. and 9 cc.

7-20-77 Appearance — Appellants — Singer

7-25-77 Appearance — Appellee — Lock

7-26-77 Appearance — Appellants — Vernon, Sartore and Hoyt.

8- 8-77 Copy of Dist. Ct. order granting extension of time to file record to 8-9-77.
Copy of Dist. Ct. order granting extension of time to file record to 8-29-77.

8-31-77 Record on appeal; Vol. I (pleadings) (356 pp.); Vol. II (deposition); Vol. III, IV (exhibits); Vol. V, VI, VII, VIII, IX (transcript) (807 pp.), orig. (1163++ pp.).

9- 7-77 Order — assigned to Calendar B; appellant's brief due 9-28-77 — Lewis.

9-15-77 Appellant's mot for ext to 10-28-77 to file brief — O & 3cc, c/s.
Order: Appellant GRANTED to 10-28-77 to file brief — RLh — cnsl ntfid.

9-26-77 Record on appeal; Supp. Vol. I (pleadings) (28 pp.); orig.

9-30-77 Record on appeal, Supp. Vol. II (pleadings) (15 pp.), orig.

10- 5-77 Record on appeal, Supp. Vol. III (pleadings) (43 pp.), orig.

10-22-77 Record on appeal, Supp. Vol. IV (pleadings) (15 pp.), orig.

10-25-77 Appellant's motion for ext to 11-14-77 to file brief — O & 3 cc, c/s.
Order: Appellant GRANTED to 11-14-77 to file brief — RLH — cnsl ntfd.

10-31-77 Record on appeal, Supp. Vol. V (pleadings) (17 pp.), orig.

11-11-77 Appellant's motion for ext to 11-28-77 to file brief — O & 3 cc, c/s.
Order: Appellant GRANTED to 11-28-77 to file brief — RLH — cnsl notfd.

11-16-77 Record on appeal, Supp. Vol. VI (pleadings) (23 pp.), orig.

11-28-77 Record on appeal, exhibits (cardboard box containing plaques and spray bottles, paint can).

11-28-77 Appellant's (Montgomery) brief — O & 9 cc, c/s.
Record on appeal — Vols. I, V, VI, VII, VIII, IX, Supp. Vols. I, II, III, IV, V, VI, 3 cc.

12- 8-77 Appellee's motion for ext to 1-6-78 to file brief — O & 3 cc, c/s.

12- 9-77 Order: Appellee GRANTED to 1-6-77 to file brief — HKP — cnsl ntfd.

1- 6-78 Appellee's motion for ext to 1-13-78 to file brief — O & 3 cc, c/s.
Order: Appellee GRANTED to 1-13-78 to file brief — RLH — cnsl notfd.

1-16-78 Appellee's brief — Orig. only, c/s. (9 cc received 1-17-78).

1-27-78 Case submitted to panel for possible summary dismissal and further briefing on issue of appellate jurisdiction.

1-31-78 Appellant's (Montgomery) reply brief — O & 9 cc, c/s.

2-14-78 Letter to parties directing filing of supplemental memoranda on or before 3-1-78 — HKP.

3- 1-78 Appellant's (Montgomery) supplemental brief, O & 9 cc, c/s ss.

3- 6-78 Appellee's motion to dismiss, O & 9 cc, c/s (to panel 3-17-78).
Appellee's memorandum brief, O & 9 cc, c/s ss.

3-14-78 Appellant's response in opposition to appellee's motion to dismiss. O & 3 cc, c/s (to panel 3-17-78).

3-20-78 Appellees' (Kirshbaum, Peel & Strange). O & 9 cc, c/s.

3-17-78 Motion to dismiss and response to panel.

3-29-78 Order — motion to dismiss denied, with leave to renew the motion time of oral argument, jurisdictional question to be considered with other issues raised on appeal — Lewis, McWilliams.

9-28-78 Appearance — appellant — John R. Frye, Jr.

10-20-78 Set for hearing — November, 1978, Term — Denver, Colorado.

11- 1-78 Appellants' motion requesting leave to submit issue on briefs and be excused from oral argument — O & 2 cc — c/s (to panel).

11- 9-78 M.PTP.ARG.F Appellee's letter motion to participate in oral argument filed — 1 copy.
M.PTP.ARG.F.SUBM. Appellee's letter motion to participate in oral argument submitted to panel per phone information 11-6-78.

11-16-78 M.SUBM.CS.BR.DISP. Order granting appellant's motion to submit on briefs disposed of by Seth.

11-17-78 CS.ARG.SUBM — Case argued and submitted to Seth, Breitenstein, Stanley.

4-2-79 OPN.F — published signed opinion filed by Seth, Breitenstein, Stanley. Writing judge is Stanley.

JM.DISP — appeal dismissed for want of jurisdiction by published signed opinion — Seth, Breitenstein, Stanley.

4-24-79 MDT.ISS — mandate issued to district court.

4-27-79 ROA.RMK — Letter re record to Judge Stanley.

4-28-79 MDT.RCPT.F — mandate receipt filed.

5-21-79 ROA,RTN.DC. Record on appeal returned to the District Court (Vol. I through IX, Supp. Vol. I through VI and exhibits cardboard box containing plaques and spray bottles and paint can).

6-18-79 ROA.RMK — duplicate record receipt sent District Court.

6-25-79 ROA.RCPT.F — duplicate record receipt filed.
ROA.RCPT.F — record receipt filed.

7-23-79 P.WRIT.CERT.F — appellant's petition for writ of certiorari filed assigned Supreme Court No. 78-1933.

10-11-79 P.WRIT.CERT.DISP — appellant's petition for writ of certiorari by Supreme Court order on 10-9-79.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CENTURY LAMINATING, LTD.,
Plaintiff-Appellee,

v.

STEVEN H. MONTGOMERY, individually,
and d/b/a LAMINATING COMPANY OF
COLORADO, and d/b/a AMERICAN
LAMINATING COMPANY, a Colorado
corporation,

Defendants-Appellants.

FILED
UNITED STATES
COURT OF APPEALS
TENTH CIRCUIT

MAR 6, 1978

No. 77-1541

MOTION

COMES NOW the Plaintiff-Appellee, by its attorneys, Robinson, Stevens and Wainwright, and respectfully moves the Court to Dismiss the Appeal of Steven H. Montgomery, for failure to file a Notice of Appeal therefrom, or in the alternative to Dismiss that portion of the Appeal of the Defendant, Steven H. Montgomery, relating to the Injunction entered on August 9, 1977, since no Notice of Appeal was filed from the entry of that Injunction.

Respectfully submitted,
ROBINSON, STEVENS & WAINWRIGHT

By: _____
WILLIAM J. LOCK
Attorney for Plaintiff-Appellee
P.O. Box 787
Albuquerque, New Mexico 87103
243-6777

(Certificate of service omitted in printing)